



**Attorney General  
Betty D. Montgomery**

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February 9, 2001

*Via Federal Express*

Magalie R. Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street S.W.,  
Room T2 A325  
Washington, DC 20554

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Re: *In the Matter of Numbering Resource  
Optimization, CC Docket No. 99-200* ✓

Dear Ms. Salas:

Enclosed please find the original and five copies of the comments of the Public Utilities Commission of Ohio in the above referenced case. Please return one time-stamped copy in the enclosed, stamped, self-addressed envelope.

Thank you for your consideration in this matter.

Respectfully submitted,

**Betty D. Montgomery**  
Attorney General

A handwritten signature in cursive script, appearing to read "Jodi J. Bair".

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COMMENTS OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**INTRODUCTION AND BACKGROUND**

On December 29, 2000, the FCC released a Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 99-200 (In the Matter of Number Resource Optimization). Among other things, the FCC's decision establishes a utilization threshold of 60 percent that carriers must meet before receiving additional numbering resources in a given rate center. This threshold will increase by 5 percent per year to a maximum of 75 percent. Those states already using a utilization threshold that exceeds the FCC's established utilization threshold might continue to use their higher threshold (up to 75 percent). Additionally, the FCC's decision addresses its national framework for thousands-block number pooling administration, and concludes that the term of the Pooling Administrator will be five years rather

than coterminous with the current NANPA term. Finally, the FCC's decision allows more state commission access to carrier numbering data.

The FCC's Further Notice of Proposed Rulemaking (FNPRM) invites additional comments on the following numbering issues: (1) states' requests to allow for technology/service-specific overlays; (2) policies to reduce the extent to which the rate center structure contributes to numbering resource exhaust; (3) implementation of fees for number reservations; (4) permitting states to perform audits of numbering usage; (5) imposing mandatory local number portability to increase participation in number pooling; and (6) consideration of market-based systems, such as auctions, for allocating numbering resources. Comments responding to the FCC FNPRM are due at the FCC on February 12, 2001.

The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its comments responding to the FCC's December 29, 2000 FNPRM in the above-captioned proceeding.

## **DISCUSSION**

### **State Access To Information**

The FCC seeks comment on whether states should have password-protected access to mandatorily reported data that is received by the NANPA. FNPRM at ¶ 123. The Ohio Commission supports states' ability to access to carrier-reported data through a password protection procedure. Because the PUCO actively administers Ohio's number relief planning, this type of numbering information is extremely important. In order to accurately and reliably perform

its delegated duties, such as relief planning or numbering dispute resolution, the PUCO believes that it would be beneficial not only to access this carrier information, but have the ability to download this information. In addition to the regularly reported data, it is of utmost importance that states have access to any updates that are filed with the NANPA.

The PUCO has indicated in prior comments to the FCC that an important aspect of the PUCO's numbering duties involve gathering accurate numbering information from carriers. As noted in previous comments by CBT, "[i]f the states cannot get timely access to the information they need to perform their duties, then the number optimization and conservation efforts the Order is designed to encourage may be hampered and carriers and their customers may be harmed."<sup>1</sup> The PUCO needs to know number availability, number assignments, numbering utilization, and number forecasts. The PUCO will be unable to carry out the duties and responsibilities required by the FCC's numbering order without the ability to have unfettered access to NANPA data.

The PUCO remains concerned that it will not be able to meet the numbering obligations imposed upon it by the FCC without the authority to collect additional data from carriers. How can Ohio accurately and reliably investigate and reclaim codes without accurate and up-to-date data? How can the PUCO sufficiently resolve carrier disputes without precise information? The PUCO

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1           Comments of Cincinnati Bell Telephone Company Comments, August 15, 2000, at 6.

must have access to NANPA's numbering data, including historical and forecasted data at the thousands block level. It is essential that state commissions obtain this information in order to fulfill their delegated numbering duties, including code investigation and reclamation, pooling trial selection and management, and utilization threshold compliance. The PUCO is unconvinced that those states that wish to collect such information (probably only a few) would create unnecessary costs or burdens to the industry. The benefit of such information would be tremendous to the PUCO.

Ohio law provides adequate protection to carriers against the release of confidential forecast and utilization data. Even though records in the custody or control of public bodies generally are public records available for inspection, the Ohio Public Records Act exempts from disclosure "records the release of which are prohibited by state or federal law."<sup>2</sup> Because the FCC requires that the information be treated as confidential, the PUCO will treat the FCC's Order as a prohibition under federal law for purposes of the Ohio Records Act.<sup>3</sup>

Thus far, Ohio carriers have largely ignored the PUCO's request that they provide the PUCO staff with copies of numbering resource requests to NANPA. With the increased need for numbering relief and the duty of the states to resolve

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<sup>2</sup> Ohio Rev. Code Ann. § 149.43(A)(1) and 149.43(A)(1)(r) (Baldwin 2000)

<sup>3</sup> The FCC requires the state commissions to treat this data, as well as forecast and utilization data, as confidential. FCC Order 00-104 at Paragraph 82. *See also* the Ohio Revised Code that employees or agents of the Public Utilities Commission of Ohio are prohibited from divulging information acquired "in respect to the transaction, property, or business of any public utility . . ." except in a report to the PUCO, while testifying in its proceedings, or when called on to testify in court. Any person violating the latter section is disqualified from acting as an employee or agent of the PUCO, and is subject to a fine. Ohio Rev. Code Ann. § 4901.16 (Baldwin 2000).

disputes, having access to only semi-annual data is problematic. If the carriers want the state commissions to make immediate numbering decisions, these carriers must recognize that state commissions must have accurate and up-to-date information. Therefore, the PUCO must have access to *all* of NANPA's data and the confidential information would be protected.

It is absolutely essential that state commissions receive the carriers' numbering data in order for the commissions to carry out their delegated duties and effectively plan for area code relief in their states. It should be the decision of the state commission alone as to whether a commission needs such information and not the decision of a carrier to decide whether a state needs such information.

#### **Service-specific and Technology-specific Overlays**

The FCC seeks comments on conditions under which service-specific and technology-specific overlays must be implemented in order to promote competitive equity, maximize the efficient use of numbering resources, and minimize customer inconvenience. In particular, the FCC wishes to focus upon proposals to permit state commissions to implement service- or technology-specific overlays on a "phased-in" or transitional basis. FNPRM at ¶¶129-130.

The Ohio Commission is pleased that the FCC has chosen to reconsider the use of service- and technology-specific overlays; however, implementing the overlays on a transitional basis is not a practical approach. The PUCO believes that the FCC's proposed transitional period should not be mandatory, but rather be an option for the states to choose. A state commission is in the best position of

determining what would be acceptable and best for its consumers. A transitional period may be best. For example, a transitional technology-specific overlay may be very confusing for customers if they believe that the overlay is just for wireless carriers and in a few months discover that it is really an all-services overlay after the transition. This would be especially true if the transitional technology-specific overlay were implemented on the time frame proposed by the Joint Wireless Carriers mentioned in FNPRM at ¶ 140. A positive example of why the transitional overlay should be optional rather than mandatory would be the following. For a state with little experience with ten-digit, local dialing, a transitional period might prove to be advantageous if it were to delay the use of this dialing pattern which appears to be the major stumbling block for any type of an overlay. Some states are much further along with their consumers' willingness to accept ten-digit local dialing than others. Ohio is one of these states. All-services overlays have already been ordered in three of Ohio's eight existing NPAs.

The PUCO believes that a service- or technology-specific overlay would be most effective if it were not transitional and were implemented while there were at least 300 NXX codes still available in an existing NPA, especially if this overlay would only have numbers assigned to it on a going-forward basis. This practice would allow for continuous growth in the existing NPA. Thousands-block number pooling should also begin in this new NPA at the same time that the new service- or technology-specific overlay is implemented.

The FCC seeks comment on the relative advantages from a numbering resource optimization perspective, a competitive perspective, and a consumer convenience perspective of service- or technology-specific overlays as opposed to all-services overlays. The FCC further seeks comment on how the perceived advantages of service- or technology-specific overlays relate to the specific conditions under which they are permitted. For example, assuming the ten-digit dialing requirement was retained for service- or technology-specific overlays, would a service- or technology-specific overlay be preferable to an all-services overlay from a consumer, competitive, or efficiency perspective? FNPRM at ¶ 131.

There are few competitive concerns that would apply to point-of-sale services (e.g. gas pumps, cash registers, and ATMs, etc.) in a service-specific overlay. For services such as these, the needed ten-digit dialing would not impact consumers directly, because machines, not people, will dial the numbers, thus making such an overlay more acceptable to most citizens. In addition, the use of these overlays would not necessarily demand the use of ten-digit dialing in the existing NPAs since the dialing pattern for such numbers would be invisible to consumers. Even if the ten-digit dialing requirement were retained for the existing NPAs when a service-specific overlay is implemented, numbers in the NPA with the geographic identity would continue to be given to both residential and business customers for a longer period of time. This practice would be considered to be an advantage from the consumer perspective.



A technology-specific overlay may show different results since customers, not machines, will actually dial these numbers. However, since consumers realize that the wireless technology provides different services than traditional land-line service, they may be more willing to accept a different dialing pattern and a different NPA for calls using the wireless technology. In fact, an extensive survey of residential and business telecommunications customers conducted by the Ohio Commission staff indicated that many customers, with and without wireless service, were overwhelmingly willing to accept wireless-only overlays. Such overlays could also possibly cover more than one NPA, freeing even more numbers in the existing NPAs to be used directly by customers for their traditional residential and business lines. The need for area code relief in possibly several NPAs could be delayed, depending on the number of NPAs the technology-specific overlay would cover. Through the PUCO's experience with area code relief in three of its eight NPAs within the past two years, telecommunications customers have indicated a preference for an overlay rather than a geographic split, even with mandatory ten-digit, local dialing. During public hearings and community interest meetings regarding area code relief throughout the state, Ohio citizens and legislators clearly identified a service- or technology-specific overlay as the logical solution to the pending NPA exhaust due to the fact that this remedy will be the least disruptive to end users as a whole.

The FCC seeks comment on the tentative conclusion that transitional technology-specific overlays must be prospective, and may not include mandatory "take-backs." FNPRM at ¶ 134. Despite our protests to the contrary, if the FCC

would mandate that such overlays be transitional, the Ohio Commission would agree with the FCC's position that technology-specific overlays must be prospective and should not include mandatory "take-backs." "Take-backs" would impose a hardship on consumers and could create a negative, competitive effect on the technology-specific industry, such as wireless carriers.

The FCC seeks comment on whether the geographic boundaries of a transitional technology overlay should conform to the boundaries of an existing area code, or whether it would be appropriate to allow a transitional technology-specific overlay that covered the geographic area of more than one pre-existing area code. Further the FCC seeks comment on whether the FCC should permit state commissions to implement transitional technology-specific overlays only where pooling has been implemented in the underlying area code, or where pooling will be implemented by the time carriers may begin taking numbers from the transitional technology-specific overlay, as proposed by the Joint Wireless Commenters. FNPRM at ¶ 135.

The option to have a technology-specific overlay to cover more than one NPA should be given to the states as one form of available relief. This option would make more sense in this case if the overlay were not implemented on a transitional basis since it could cause more customer confusion than necessary. Also, the use of technology-specific overlays should not be limited to area codes where pooling has been implemented. If the state commission deemed it appropriate, a technology-specific overlay might be established for the entire state, regardless of whether number pooling existed in every NPA this new

overlay would cover. In fact, a technology-specific overlay may be even more effective if it were to cover an entire region of states, rather than one NPA. Regardless of the geographic boundaries of such an overlay, thousands-block number pooling in the technology-specific overlay should begin with its implementation allowing numbering resource optimization to be utilized at the very beginning of this new NPA.

The FCC also seeks comment on how transitional technology-specific overlays should operate. In addition, the FCC seeks comment on this approach and on the appropriate point for transition from technology-specific to all-services overlay. FNPRM at ¶ 136. The Ohio Commission believes, to begin with, that all technology-specific overlays, regardless of whether they are transitional or not, should utilize thousands-block number pooling at the outset. The issuance of thousand-number blocks would be most effective in a clean NPA.

The PUCO objects to the Joint Wireless Commenters proposal that such an overlay must be transitional; however, if the FCC determines that it must be, then the Ohio Commission believes that prior to a transition to an all-services overlay, a number of factors must be considered. First, the impact on customer perspective and inconvenience must be considered. Another factor to consider would be the number of NXX codes available in the exhausting NPA as well as in the transitional technology-specific overlay. The geographic coverage of such an overlay may determine if changing the technology-specific overlay to an all-services overlay would be advantageous to all NPAs covered by this overlay. For instance, if one underlying NPA is in danger of exhaust, but the technology-

specific overlay covers several NPAs, the question of whether the change is beneficial to all customers assigned to numbers in the technology-specific overlay must be answered. What types of dialing patterns will change in all of the underlying NPAs if such a transition is completed?

The FCC seeks comment on whether and how our mandatory ten-digit dialing rule should apply in the context of transitional technology-specific overlays. FNPRM at ¶ 137. The FCC seeks comment on whether there is a basis to depart from the ten-digit dialing requirement for a transitional overlay. To the extent that such a departure would be necessary, the FCC seeks comment on whether it would be appropriate to waive the ten-digit dialing requirement as the Joint Wireless Commenters have proposed until the overlay is converted to an all-services overlay or until CMRS carriers are required to participate in thousands-block number pooling, whichever occurs earlier. To the extent that commenters disagree with this approach, the FCC invites them to suggest alternatives. FNPRM at ¶ 138. If the FCC determines that a technology-specific overlay must be transitional, despite our protests, the PUCO believes that mandatory ten-digit dialing in the underlying NPA could be waived until the overlay is converted to an all-services overlay or until CMRS carriers are required to participate in thousands-block number pooling. The PUCO agrees with the Joint Wireless Commenters that permissive ten-digit dialing be provided at the implementation of a technology-specific overlay, should the FCC determine it must be a transitional overlay. By doing this, customers have an opportunity to adjust to the idea of ten-digit dialing before it becomes mandatory. Program-

ming of equipment to accept ten-digit dialing can be initiated at the outset giving companies plenty of time to be prepared for the future, mandatory ten-digit dialing.

Where a state chooses to implement a transitional technology-specific overlay to provide NXX code resources for non-LNP capable carriers, the FCC seeks comment about whether LNP-capable carriers should be prohibited from taking numbers out of the transitional overlay code prior to the time that it is converted to an all services overlay. FNPRM at ¶ 139. The PUCO notes that the FCC suggests that one way to achieve the objective of CMRS carriers' timely implementation of LNP while at the same time not appearing to provide them with a "protected" source of numbers is to require that all transitional overlays convert to all-services overlays by the November 24, 2002 deadline for covered CMRS carriers to implement pooling. This proposed prohibition is not worthwhile since it will be such a short period of time before the November, 2002 deadline. The PUCO believes that the most effective way of dealing with this is to ensure and enforce the November 2002, deadline with the CMRS carriers.

The FCC seeks comment on whether there should be any limitations on when states are permitted to implement transitional technology-specific overlays. The FCC also seeks comment on this proposal and on whether it is possible to establish such a concrete set of triggering conditions for this form of area code relief. The FCC further seeks comment about whether an alternative set of triggering conditions would be more appropriate. In addition, the FCC seeks comment on whether there are any other additional conditions that should be

placed on states' ability to implement transitional technology-specific overlays. FNPRM at ¶ 140.

There should not be any limitations on when states are permitted to implement technology-specific overlays, including the fact that the FCC demands such overlays be transitional. States are in a better position to determine what sort of relief is necessary for their consumers. The PUCO does not agree with the Joint Wireless Commenters' proposal that transitional, technology-specific overlays be used when an original NPA only has either 30 NXX codes remaining or a number of NXX codes equal to the number of rate centers in the underlying NPA. The proposed timing may be too late to implement such an overlay. In certain situations, this could easily create a transition period of just a couple of months. For example, Ohio's 614 NPA, which currently needs relief, had approximately 25 NXX codes issued in just one month. In such a situation, the transition period would be useless. If Ohio waited to implement a technology-specific overlay following the Joint Wireless Commenters' suggested guidelines, customers would have very little time for permissive 10-digit local dialing before it became mandatory.

Ohio's experience with the past history of NPA exhaust forecasts has proven them to be unreliable. Ohio is not comfortable with waiting to implement relief until there are only 30 NXX codes left in an NPA. Ohio's guidelines for area code relief planning are further support for our position since these guidelines require a planning process to begin 24 months before exhaust. In its recent NPA relief decisions to implement all-service overlays, the PUCO has

determined that as a part of this process for the benefit of its consumers, a minimum, six-month permissive dialing period should exist before 10-digit local dialing becomes mandatory. With the Joint Wireless Commenters proposal, this required, permissive dialing period would probably not be possible.

A specific overall NPA-wide utilization threshold should be met before implementing a transitional technology-specific overlay, as long as the rate of growth was also an equal factor. A utilization threshold for one state would not necessarily be a correct guideline in another state simply because the growth in NXX requests in one area may be on a much faster timeline than in another. If thousands-block number pooling were in effect in the underlying NPA, the growth factor may be lessened somewhat.

The FCC seeks comment on whether the FCC should permit states that wish to designate transitional service- or technology-specific area codes for groups besides non-LNP-capable carriers to do so. If so, the FCC seeks comment on whether the considerations that would be applied in those situations would be similar or different to those above. FNPRM at ¶ 141. The FCC also seeks comment on whether it would be appropriate to permit states to establish long-term overlays for certain services and what types of services may fall into this category. The FCC also seeks comment on whether establishing long-term service-specific overlays for such services would raise the same types of competitive concerns that the FCC has identified with other service-specific overlays. In addition, the FCC seeks comment on whether these types of services use, or may in the future use, enough numbering resources that establishing long-term serv-

ice-specific overlays to accommodate them would have numbering resource optimization benefits, or, in the alternative, would contribute to NANP exhaust by introducing new NPAs for which there is insufficient demand. FNPRM at ¶ 142.

States should be allowed to establish long-term, service-specific overlays. Many services could be included in such an overlay such as: point-of-sale terminals, remote automatic teller machines, coin-operated telephones, known data-only lines (even second lines in the home strictly for computer use), and any numbers without public telephone number association such as numbers in a hunt group behind one published number. There should be no competitive concerns with such overlays since the phone numbers involved are invisible to consumers. In order for such an overlay to really be beneficial, on a going-forward basis, a concerted effort to identify the numbers needed to be assigned to the overlay must be made by all carriers. In addition, although extremely labor-intensive, an effort to "take back" numbers already assigned and put them back into the underlying NPA would be needed in order that the old NPA could exist for a longer period of time.

"Taking back" these numbers would not be as controversial as for other types of overlays since customers do not regularly dial these numbers. Before an actual service-specific overlay would be implemented, additional studies should be made to determine if there are enough numbers in the above-mentioned services to be included in such an overlay to ensure that this type of overlay would utilize numbers to their optimum benefit. States should have the flexibil-



ity to determine which type of overlay would best suit the need for relief in any NPA(s).

### **The Rate Center Problem**

While recognizing that it has previously requested comments on how to address and resolve the problems resulting from the existence of multiple rate centers in each NPA, the FCC now seeks further comment on the rate center problem, particularly on what policies could be implemented at the federal level to reduce the extent to which the rate center system contributes to and/or accelerates numbering resource exhaust. The FCC reiterates its support for states to consider and implement rate center consolidation on their own. In particular, the FCC encourages states to explore rate center consolidation in areas where contiguous calling areas have identical or substantially similar calling schemes in light of the fact that these scenarios will least likely have a significant impact on carrier revenues. In order to best accomplish this result, the FCC seeks comment on ways of severing the connection between number assignment and call rating and routing. It also seeks comment from the industry and state commissions on past and present rate center consolidation efforts, including information on the impact that rate center consolidation has had on numbering optimization. Finally, the FCC seeks an analysis of the benefits and costs of rate center consolidation in the 100 largest MSAs in the country. FNPRM at ¶ 147.

To date, the Ohio Commission has not pursued the endeavor of rate center consolidation. Although the Ohio Commission recognizes that rate center con-

solidation may, in certain scenarios, assist in alleviating some number exhaustion, the Ohio Commission does not believe that the FCC should issue a mandate to states or carriers regarding rate center consolidation. While the Ohio Commission agrees that rate center consolidation may be less problematic to implement in those areas where there are contiguous rate centers with identical calling areas and identical exchange rates, we are not convinced that rate center consolidation is competitively neutral inasmuch as any associated costs would largely fall upon the incumbent local exchange companies. This would in turn place an undue burden on the incumbent local exchange company residential customers who may not have any viable competitive local service alternative choice.

Further, while rate center consolidation would no doubt provide some efficiency gains in the larger and more densely populated metropolitan areas, there are a vast number of unused telephone numbers in the non-metro areas, which cannot be accessed, unless rate centers are consolidated over vast distances. The only viable near term solution to access the vast supply of unused numbers in non-metro areas is a technical solution that breaks the rate center boundary in terms of number assignment.

It is also important to recognize that there are some urban centers that are essentially already an exclusive NPA. For example in Ohio, the Cincinnati rate center covers most of Hamilton County and the "513" NPA by itself. Consolidating rate centers with the Cincinnati rate center would do very little to delay exhaust. Rather, the Ohio Commission believes that the implementation of

overlays, as pursued in Ohio, provides for the best potential of number usage in an NPA while minimizing concerns related to cost and disruption to local telephone companies and their subscribers.

Finally, the Ohio Commission calls attention to the fact that the costs and potential effects on rates and customer confusion with changed calling areas resulting from rate center consolidation are still unknown. The Ohio Commission recognizes that there is a significant effort on the national level to transition the current local number portability system to one that will allow number porting and pooling beyond existing rate center boundaries. If geographic local number portability is likely to be a near term reality, the short-term benefits of immediate rate center consolidation may not outweigh the long-term costs.

#### **Enforcement and Audits**

In its *Second Report and Order* in CC Docket Nos. 96-98 and 99-200 (*Second Report and Order*), the FCC concluded that carriers that violate federal numbering requirements, or that fail to cooperate with the auditors from the FCC's Accounting Safeguards Division, or other designated agents, should be found to be in violation of the FCC requirements and may be subject to possible enforcement action, including monetary forfeitures, revocation of interstate operating authority and cease and desist orders. *Second Report and Order* at 96.

The FCC now seeks comments as to whether the denial of numbering resources should be utilized as an additional enforcement mechanism. *Second Report and Order* at 154.

In addition, while the FCC believes that a national program will provide some degree of uniformity across the country in the manner in which audits are conducted, it recognizes that state commissions would benefit from having a role in conducting these carrier audits. To this end, the FCC seeks comment on whether and under what circumstances state commissions should be given the independent authority to conduct "for cause" and "random" audits either in lieu of, or in addition to, the national audit program established by the Second Report and Order. FNPRM at ¶ 154.

The Ohio Commission agrees with the FCC's proposed denial of numbering resources as an additional enforcement mechanism. Specifically, the Ohio Commission believes that, due to the significant demand for the scarce numbering resources and the real likelihood of hoarding, strict enforcement provisions are required. Denial of numbering resources is the most effective enforcement mechanism for failure to comply with the rules. Enforcement must be uniformly strong with minimal exceptions, in order that carriers have sufficient incentive to comply with the rules. In recommending the denial of numbering resources as a punitive remedy, the Ohio Commission believes that this should entail a denial of all requested resources for a "significant" period of time. To do otherwise would signify nothing more than a token measure and would not serve as a disincentive for future conduct. The Ohio Commission also supports the use of fines and forfeitures, and possibly, in extreme situations, revocation of certification and licenses as a possible sanction for violation of FCC rules. Such revocation must be delegated to state commissions who choose to take such

a role, subject to review of the FCC. If not, carriers may be able to hide behind "national" policies in order to continue practices which negatively impact local number administration. If fines or forfeitures are used, the FCC must mandate high amounts to deter carriers who may determine that the cost of the fine is worth committing the violation.

The FCC seeks comment on whether, and under what circumstances, state commissions should be given the independent authority to conduct "for cause" and "random" audits in addition to national audits. This appears to be a fruitless exercise, inasmuch as the FCC has already stated its desire a national auditing framework in order to prevent carriers from having to comply with differing demands in different states. *Second Report and Order at 91*. Additionally, the Ohio Commission sees no value in proceeding with state initiated audits in the absence of state-specific reporting and forecast requirements. Notwithstanding these concerns, the Ohio Commission does not object to the FCC's proposed federal audit program provided the proposed federal audit program is implemented in a fashion to effectively identify violators in a timely fashion, that states can trigger "for cause" federal audits, and that the states can participate on the FCC audit teams. States must be informed of all auditing activities and also be given access to the information supplied to the auditors, as well as the auditors' findings. In offering its support, the Ohio Commission does express its concern over past federal numbering relief failures despite assurances of the effectiveness of the proposed monitoring and forecasting efforts.

### **Fee for Number Reservations**

The FCC seeks comment on the North American Numbering Council (NANC)'s proposal to allow unlimited reservations of numbers on a month-to-month basis. The FCC also seeks comment on whether unlimited reservations of numbers are necessary, or whether there should be a constraint on the time period that numbers can be reserved. The FCC further seeks comment on whether charging a fee to carriers would provide more appropriate incentives for number use. Also, the FCC inquires that if a fee should be charged for reserving numbers, who should pay for the fee and a specific fee amount. FNPRM at ¶ 152.

The Ohio Commission is concerned about the adoption of any rule that would allow a carrier to reserve numbers at the request of customers without a timeframe to place these numbers into service. The Commission does not agree with NANC's proposal to allow carriers unlimited reservation on a month-to-month basis in exchange for a fee. According to NANC, this fee would be paid for by the end users requesting the reservation of a particular number or set of numbers. The FCC has been more than generous in the *Second Report and Order* by extending the current reservation period from 45 days to 180 days with no fee.

The FCC's current rule meets the objective of allowing carriers to provide service to customers who, in the normal course of business, need to reserve certain numbers prior to service initiation. However, if NANC's proposal is adopted, the Ohio Commission recommends that the FCC set the fee, and that

the fee reflect the actual value of those numbers. This fee, without mark-up, should be paid by the end user and the carriers should not be allowed to sell or otherwise profit from number reservation activities. Further, the Ohio Commission recommends that even with a fee payment, number reservation should occur for a definite period of time. The practice should be strictly limited to providing service to a particular customer within a specified period of time. Simply, the Ohio Commission does not foresee a circumstance where a carrier would allow a customer to reserve a number for service, without compensation for that service, until some unspecified future period of time. Thus, the Commission recommends that the FCC maintain its newly adopted rule regarding number reservation.

#### **Developing Market-Based Approaches for Optimizing Numbering Resources**

The FCC is seeking further comment on how it can establish a market-based approach for numbering resources. In particular, the FCC seeks comment on whether it has the requisite authority, pursuant to 251(e) of the Telecommunications Act of 1996, to implement a framework to collect funds from carriers interested in obtaining numbering resources. Further the FCC seeks comment on the appropriate dispensation of these funds for such programs as universal service. Finally, the FCC asks whether additional statutory authority is necessary to implement a market-based approach to number allocation. FNPRM at ¶¶ 157-160.

First and foremost, the Ohio Commission would be hesitant to support any market-based number allocation mechanism that did not appropriately recognize the economic value of this scarce public resource. Further, an overriding concern of a market-based approach to number allocation is that it may favor a carrier with "deeper pockets" with the ability to pay for number reservation versus a new carrier that is entering the marketplace with limited resources. However, as stated in previous comments regarding this matter, the Ohio Commission believes that Section 251(e)(2) of the Telecommunications Act of 1996 permits the FCC to determine the costs associated with numbering administration and number portability. The 1996 Act also states that these costs must be recovered on a competitively neutral basis. Thus, if the FCC pursues a market-based approach, the FCC should establish a recovery mechanism that is cost based. As the Ohio Commission will explain in greater detail below, the recovery mechanism previously recommended is based on the costs of establishing (application fee) and maintaining (retention/license/rental fee) number administration.

As stated in earlier comments, the Ohio Commission recommends that excess revenues collected from a cost-based approach to number administration could be dispersed to a fund to support number resource optimization. This fund could be used to accelerate the deployment of Local Number Portability (LNP) and thereby enable pooling in more areas. The obvious benefit of increased deployment of LNP would be the creation of more available areas for thousands block number pooling. The fund could also be used to increase the number optimization efforts of the NANPA including code administration and



reclamation activities. Finally, a portion of the fund could be set aside to investigate and assist with the expansion of the NANP should that be deemed necessary.

#### **Structure of Markets / Need for a Market Based Allocation System**

In the FNPRM, the FCC discusses and seeks comment on how to structure a numbering resources market mechanism in a manner that treats all users of numbers in a fair, equitable and non-discriminatory manner. Further, the FCC tentatively concludes that any market-based allocation system for numbering resources should include both primary and secondary markets for numbering resources. The FCC tentatively concludes that the primary market for numbers would consist of an entire NPA rather than each rate center and the secondary market would be comprised of individual rate centers. The FCC believes that it would be possible to auction numbers in the primary markets. The FCC further questions whether NANPA or the Pooling Administrator would be in the position to conduct such an audit and how the supply of numbers to be auctioned in each geographic area would be determined. Alternatively, the FCC points to the proposal of the Ohio Commission to charge for numbers as part of a two-part approach. FNPRM at ¶¶ 161-176.

The Ohio Commission continues to support its cost-based pricing mechanism as opposed to a purely market-based approach. As stated previously, the Ohio Commission's overriding concern with a market-based approach is that it is competitively neutral and does favor the retention of numbering resources by

carriers with the most revenue and not those that are just entering the business or are interested in niche markets. But the Ohio Commission does believe that an appropriate, competitively neutral pricing mechanism can be prescribed and applied to all carriers' current numbering resources and all future numbering resources and retention.

As stated in the Ohio Commission's previous comments, an appropriate cost-based pricing mechanism should be twofold. The two pieces would include an acquisition price and a retention price. Both prices would be cost-based. The acquisition price would be analogous to an application fee and would cover the costs of providing the number resource to the carrier. The second part of the fee would be a retention price. This charge would be analogous to a rental fee and would cover the costs that the carrier should bear for retaining the use of a scarce public resource. The Ohio Commission believes that this two-fold pricing mechanism should apply uniformly to the carriers existing as well as future number inventories. The Ohio Commission also suggests that the retention charge could be phased in over a two-year period of time in order to mitigate the costs to carriers whom are not accustomed to paying for numbers.

The Ohio Commission avers that its proposed cost-based pricing mechanism that recovers the costs of applying for and retaining numbering resources is preferable to a system that allows the market to decide the price of the resources. Market-based pricing may be the best solution in a market where there is an unlimited supply of goods and resources. As everyone is aware, numbering resources are quite limited in supply. While the market-based approach may

cause some companies to hesitate from requesting further resources the Commission is concerned that this may disproportionately affect carriers with limited resources. Thus, the Ohio Commission continues to recommend a cost-based approach to charging for numbers that recovers a uniform set of costs associated with number administration.

**Thousands-Block Number Pooling for Non-LNP-capable Carriers**

The FCC seeks comment about whether it would be appropriate to extend pooling requirements to carriers exempted from pooling requirements who either are outside the largest 100 MSAs and have not received a request to deploy LNP from a competing carriers or are paging carriers. Specifically, the FCC wishes to know to what degree would these carriers' participation in thousands-block number pooling help avoid premature exhaust of numbering resources at the 10,000 number block level and extend the life of the NANP. The FCC also seeks comment as to what extent are these carriers such significant users of numbering resources that their participation in pooling would have significant numbering optimization benefits. In addition, the FCC seeks comments on the benefits of thousands-block number pooling for competing carriers that need initial numbering resources in each rate center for the purpose of establishing their "footprints". The FCC seeks comment on whether they should limit any additional pooling requirements to certain classes of carriers, and if so, on what bases any exemptions should be made. In addition, if the FCC were to impose pooling requirements on carriers irrespective of their NLNP status, the FCC seeks com-

ment on whether rural carriers should be exempt from any such requirements. FNPRM at ¶ 185.

All carriers, including those currently exempt from pooling requirements, should be participating in thousands-block number pooling no later than when wireless carriers begin participating in pooling in 2002. Because NPA exhausts are happening so quickly and any means to optimize number utilization must be taken, the PUCO believes that *every* telecommunications carrier should be required to participate at that time. For example, many small LECs and rural LECs have thousands of numbers in their NXXs that are not being used. If they would participate in pooling as well as the paging carriers, any new carriers, including CLECs and other wireless carriers, could at least share the numbers left in the ILEC's NXX. The closer an NPA gets to exhaust, the more significant the sharing of numbers within an NXX becomes. Every number counts. The reality of running out of NPAs - now seen as a definite, rather than a remote possibility in a far distant future - far outweighs any carrier's need to establish a "footprint" with its own NXX. Customers do not really focus on a carrier's NXX. A carrier's service offerings and its quality of service are what really establish its "footprint". Pooling requirements for carriers currently exempted should be prospective and not require "take backs" for any existing numbers. These requirements, however, should be retroactive for non-contaminated thousands blocks in the NPA.

### **Waiver of Growth Numbering Resource Requirements**

Presently, the FCC allows carriers who are not able to meet the threshold requirement for receiving additional numbering requirements, but can demonstrate an actual need for additional codes, to seek a waiver from the FCC rules concerning the threshold requirement. The FCC recognizes that certain conditions may prevent carriers from meeting the rate center-based threshold when they actually need additional numbers. The FCC, therefore, seeks comment on the need to establish a "safety valve" apart from the general waiver process to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources. FNPRM at ¶¶186-189.

The Ohio Commission agrees that certain conditions may arise under which a carrier may not qualify for additional numbering resources subject to a utilization threshold that encompasses an entire rate center. For instance, a carrier may initially begin serving customers in just a portion of the rate center in the case of very large geographic rate centers. The Ohio Commission envisioned such a scenario when the Ohio Commission adopted Ohio's current utilization threshold pursuant to delegated authority from the FCC (Case No. 97-884-TP-COI, December 9, 2000, February 3, 2000 and CC Docket 96-98, DA 99-2635, NSD File No. L-99-74, November 30, 1999). Further, the Ohio Commission requires that affected companies should file a case with the Commission requesting that the Commission grant the request of a carrier to obtain codes outside of the Ohio Commission's utilization threshold prior to submitting such a request to NANC.

To date, no Ohio carrier has initiated such a request. Thus, the Ohio Commission believes that a "safety valve" is an exception rather than a rule. The FCC should continue to allow the Ohio Commission to address such infrequent requests on an individual case basis rather than mandating a set of criteria for a "safety valve" that may not be appropriate in every circumstance. As is currently the case, the Ohio Commission remains committed to working with carriers who can demonstrate an actual need for numbers outside of the rate center utilization requirement.

#### CONCLUSION

The PUCO thanks the FCC for the opportunity to file comments in this proceeding.

Respectfully submitted,



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